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April 17, 2001

**M E M O R A N D U M**

TO: All Attorneys Public & Private, Virgin Islands  
FROM: Jeffrey L. Resnick  
U.S. Magistrate Judge  
RE: Changes in the Federal Rules of Civil Procedure  
CC: Hon. Raymond L. Finch, Chief Judge  
Hon. Thomas K. Moore, District Judge  
Hon. Geoffrey W. Barnard, Magistrate Judge  
Wilfredo F. Morales, Clerk of Court  
Law Clerks

All attorneys are given notice of the following principal changes in the Federal Rules of Civil Procedure (effective 12/1/00):

I. Rule 5(d)

As amended, Rule 5(d) now uniformly forbids filing of disclosures (except as pretrial disclosures pursuant to Rule 26(a)(3) which must be promptly filed), and of discovery requests and responses (other than those concerning Rule 35 examinations) "until they are used in the proceeding or the court orders filing." In such regard, see also the following recent Orders of Chief Judge Finch:

Order Regarding Filing of Requests for Production of Documents (Fed. R. Civ. P. 34) dated January 31, 2001). Order regarding filing of documents produced pursuant to Fed. R. Civ. P. 26 and LRCi 26.1-26.3 dated February 9, 2001.

II. Rule 26(a)(1)

- A. The amendment deletes the "opt out" by Local Rule provision of 26(a)(1).
- B. Rule 26(a)(1)(A) now requires initial disclosure of individuals "...likely to have discoverable information that the disclosing party may use to support its claim or defenses, unless solely for impeachment, identifying the subjects of the information." (The underlined language above is substituted for the former, "relevant to disputed facts alleged with particularity in the pleadings").
- C. Rule 26(a)(1)(B) now requires productions of "all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment. (The underlined language above is substituted for the former, "that are relevant to disputed facts alleged with particularity in the pleadings").
- D. The paragraph following Rule 26(a)(1)(E)(viii) now requires that the initial disclosures must be made within fourteen (14) days after the Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not

appropriate in the circumstances of the action and states the objection in the Rule 26(f) discovery plan.

### III. Rule 26(b) (1) & (2)

- A. Rule 26(b) (1) now provides for obtaining discovery "regarding any matter not privileged that is relevant to the claim or defense of any party." (The underlined language above is substituted for the former "relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party").
- B. Rule 26(b) (2) deletes that local rule may alter the limits in the Federal Rules of Civil Procedure on the number of depositions and interrogatories or the length of deposition under Rule 30.

### IV. Rule 26(f)

Rule 26(f) deletes that a local rule may exempt therefrom and provides that at least twenty-one (21) days before a scheduling conference (formerly 14) the parties confer to consider settlement and/or a discovery plan (formerly "meet to discuss"). The Rule now provides for submitting the plan to the court within fourteen (14) days after the conference (formerly 10).

### V. Rule 30(d) (2)

As amended, Rule 30(d) (2) deletes that local rule may limit

the time permitted for the conduct of a deposition.

VI. Rule 37(c)(1)

As amended, Rule 37(c)(1) expands the sanction of automatic preclusion of evidence to encompass unmade discovery.

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Such amendments' effectively change several applicable Local Rules. The Local Rules of Civil Procedure will be amended to reflect such changes. All attorneys should carefully review the complete amendments to the Federal Rules of Civil Procedure.